

***Statement of Charles Bartsch
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***on
Public Health and Economic Problems Associated With
Leaking Underground Storage Tanks***

***before the
U.S. House of Representatives
Financial Services Committee
Subcommittee on Housing and Community Opportunity***

September 12, 2002

Madame Chairman and members of the Housing and Community Opportunity Subcommittee, thank you for the opportunity to testify about the impact of leaking underground storage tanks on community development and revitalization – an issue just now gaining national attention, but one with on-going, serious consequences for potentially hundreds of thousands individual businesses and homeowners across the country.

I am Charles Bartsch, senior economic development policy analyst at the Northeast-Midwest Institute (NE-MW), and a specialist in brownfield and site contamination issues. Since 1991, the Institute — working closely with the bi-partisan Northeast-Midwest Congressional Coalition, currently co-chaired by Reps. Jack Quinn and Marty Meehan — has examined the relationship between environmental contamination and community development. A key part of that effort has been identifying ways in which existing federal programs could be more creatively and usefully linked with the resource needs of contaminated sites.

NE-MW has analyzed reuse activities at contaminated sites in more than 100 jurisdictions – large cities like Pittsburgh, Chicago, Los Angeles, and Cleveland; mid-sized cities like Trenton, Newark, Buffalo, Kansas City, Worcester, and Bridgeport; and small towns like Ocanto, Wisconsin, Glen Cove, New York, and Wyandotte, Michigan. Our research has indicated that, while the problems surrounding reuse of contaminated sites are crucial ones in the nation's traditional industrial centers, with aging infrastructure and housing stock, they are by no means confined to such communities. The issue is pervasive, having surfaced in every state across the country. To address it, communities need practical public-sector tools and approaches that are easy to access and easy to use.

The Subcommittee on Housing and Community Opportunity is to be commended for its continuing efforts to explore ways in which seemingly diverse environmental and community development challenges can be met with innovative approaches that address both sets of issues practically and efficiently. Earlier this year, the Subcommittee spearheaded legislation to open up HUD's Brownfield Economic Development Initiative (BEDI) program, an effort which will have significant impacts on commercial and industrial revitalization in cities and towns of all size. Now, the Subcommittee is examining ways to deal with environmental issues at residential sites, where the most common form of contamination stems from leaking underground storage tanks, or LUSTs.

This hearing is especially timely. Earlier this year, President Bush signed the Brownfield Revitalization and Environmental Restoration Act into law, which sets the stage for new public-private partnerships that can resolve thorny liability issues that impede site reuse; it also clarifies the state-federal relationship regarding cleanup finality. And most significantly – in the context of the proposed legislation before the Subcommittee – the new brownfield law permits EPA to recognize and direct resources to sites with petroleum contamination. These are solid steps forward, which need to be built upon to help residential brownfields, whose values are undermined by the stigma of contamination.

My comments are based on the findings of two recent research projects that I have undertaken at the Northeast-Midwest Institute which relate to the LUST issue – a report on **“Recycling America's Gas Stations: the Value and Promise of Revitalizing Petroleum Contaminated Properties”** prepared in partnership with the National Association for Local Government Environmental Professionals (NALGEP); and **“Brownfields and Housing: How are State Voluntary Cleanup Programs Encouraging Residential Development?”** carried out in cooperation with the National Association of Homebuilders. Both are available in their entirety, on-line and free of charge, at nemw.org.

How significant is the problem of leaking underground storage tanks (LUSTs) on communities, and what is its impact on communities?

The sheer number of single and multi-family housing units affected by actual or potential LUST contamination is unknown – but, given the age of so many of these structures and their utility systems, there is no question that it is significant. LUST-impacted housing is found in urban, suburban, and rural areas. By way of comparison, we do know that LUST sites comprise a significant subset of the brownfields universe; nearly 200,000 out of the estimated 500,000 brownfield sites contain tanks. In some locations, this percentage may be even higher; for example, in New Hampshire, officials estimate that 70 percent of the state's brownfields have a petroleum component. Many of these sites are gas stations that have shut down because they could not comply with 1998 UST upgrade requirements, often because their owners could not afford to investigate and clean up the contamination that was present. According to a May, 2001 study by the U.S. General Accounting Office, more than 200,000 tanks – almost 30 percent of the total – were not being operated or maintained properly, increasing the risk of additional petroleum contamination that could pose risks to human health and the environment. Clearly, if old gas

station tank problems are used as a proxy for all tank situations, many homeowners with old, often unused, heating oil tank systems face a similar situation. And like gas station revitalization strategies, residential LUST sites need to be addressed in a comprehensive way – in which contamination is not only detected and contained, but where sites are remediated and put to new uses consistent with that clean up.

What issues do LUST situations raise related to housing and community development?

Since land use and home ownership are basic locally driven functions, the immediate challenge that homeowners face is linking the real, dollars-and-cents impacts of LUST contamination with the programs and policies of states and communities that may not have made that crucial connection – but which will play a critical role in that process. NE-MW and NALGEP identified a number of key issues in their analysis of tank sites that also have relevance to housing sites.

Assessment and cleanup process. As with the initial situation that drove development of the brownfield program, process is a key issue that needs to be sorted out and addressed – in this case, determining how LUST sites can best be handled, what constitutes enough comfort for the private sector to be interested, when is the cleanup really completed. Effective partnerships must be in place that focus on UST site cleanup and reuse – driven by the state, but in a way which allows maximum local flexibility to deal with the multitude of tank issues. To this end: several issues were identified.

- a need exists to increase communication, coordination, and consistency with UST efforts across the state, among all types of stakeholders; and
- process-related incentives, such as reducing new owner's liability, can be significant in encouraging cleanup and reuse, and need to be better marketed

Existing brownfield programs – with their focus on process certainty and finality – have the potential to be significant UST site reuse tools, and in fact most state voluntary cleanup programs do allow sites with petroleum contamination to be addressed. But current state use of them in this manner varies significantly – some states, like New Jersey, use them essentially interchangeably and emphasize the certainty they can bring, while others rarely (or never) make that linkage.

Similarly, the use of risk-based corrective action (RBCA) or comparable approaches, along with cleanup pegged to future land use and incorporation of institutional controls as part of the cleanup remedy, are common state brownfield program approaches. However, these connections – and their important cost-saving advantages – may or may not be made in the case of an UST situation. Great potential exists if these two recognized and accepted brownfield tools are incorporated into an UST site reuse strategy.

Capacity. The ability to develop, promote, and carry out LUST cleanup and redevelopment is an issue that cuts across all implementation lines, and is impacted by funding

constraints. Some states are trying to modify existing or define new agency processes to incorporate LUST efforts from a broader linked environmental/ economic development vantage point, and in some places this involves a host of staffing issues and mindset changes regarding the issue of tanks and the barriers of contamination.

In some areas, “capacity” has emerged in as a two-prong issue. In Illinois, for example, state staff noted that site owners and prospective purchasers, as well as local officials, often lacked the technical experience – and the confidence – to proceed with UST projects, especially at residential locations where children could be at risk. And at the same time, most state and local agencies face staffing constraints and are not able to devote the personnel needed for UST sites, to address those concerns. This meant that activities like gaining property access and negotiating with tank owners, or even working with them more informally to alert them to reuse opportunities and processes – which could advance UST site reuse on a broader scale – could not be carried out.

Legal and situational constraints. A new emphasis on cleanup and reuse can bump up against constraints that stem from provisions in existing state and federal rules, or the practical constraints of working with an old, abandoned tank site. These include:

- availability and reliability of funding for LUST cleanup and site reuse, including applicability of existing federal and state redevelopment resources;
- back taxes on UST sites, which make many of these properties “upside down” in terms of how they cost out – a forgiveness strategy could be a good incentive;
- HUD’s policy which largely prohibits use of agency housing program resources for any residential project which includes institutional controls (such as capping or paving) as part of the cleanup remedy, a situation which could limit the effectiveness of the proposed legislation before the Subcommittee – HUD has been studying this issue for a long time, and they should be directed to act;
- abandoned or orphan site issues, such as covering cleanup costs and addressing liability concerns;
- need for public tools to help with outreach and community information/participation activities to help in LUST situations; and
- local activities like title searches and the hunt for viable responsible parties, linked to basic cost recovery concerns – some states and cities are working with various agencies and adopting a more flexible interpretation of cost recovery requirements to enhance UST site cleanup and reuse strategies.

Cost recovery is a big issue that has been emphasized by numerous communities as a big issue in promoting tank site reuse. EPA requires that cost recovery be pursued, but the approach to cost recovery varies across the states, and nationally. In its cost recovery policies relating to USTs and the LUST trust fund, EPA has noted that “*STATES WILL IMPLEMENT THE COST RECOVERY*

PROGRAM, HAVE CONSIDERABLE DISCRETION IN OPERATING IT, AND BENEFIT DIRECTLY FROM THEIR SUCCESSFUL RECOVERIES.”

With this direction in mind, some state agencies take a very strict view of cost recovery, which tends to hamper their flexibility when pursuing new UST site users and uses. The need to cost recover, or establish an owner’s inability to pay, can create a lengthy up-front process before work can begin, which can deter new private users from taking on these sites. In practice, some states, like New Jersey and New Hampshire, find that cost recovery is working fairly well. New Hampshire officials there often use discretion when sites have a negative value, such as the typical gas station that cannot economically manage the average \$70,000 cost for assessment and remediation. New Jersey does not see cost recovery as an impediment, because most of the site work there is done by the dischargers or developers using private funds.

Chicago has taken an innovative approach to cost recovery. Site owners there who do not have the money to proceed can get an advance from the city and set up a third-party escrow account, reimbursed later after cleanup and reuse are completed.

Incentives. Incentives play a critical role in any type of community development strategy, and a key issue identified in the NE-MW/NALGEP tank site analysis is making the connection between UST revitalization situations, and traditional economic development/ redevelopment tools and incentives that could support these types of projects. For example, Salt Lake City and Chicago both operate “vacant and abandoned” gas station programs, which facilitate the cleanup, marketing, and new use of this type of UST sites, often for housing purposes. Other cities are developing more informal approaches to accomplish the same objective, by working with private developers or community groups on targeted sites with important local impacts. And – as with traditional brownfield sites – a number of cities have started to tap other state and federal program resources, as well as devote some of their own, to help finance cleanup and reuse activities at former gas station corners and other UST sites.

Private sector outreach and participation. To date, cities and states have done very little tracking of the private sector role in UST site reuse, in terms of most suitable new uses, best approaches to site marketing, and similar situations – and virtually none in the context of individual homeowners grappling with LUST issues and stigma. Better tracking and outreach would allow states and cities to better shape their technical assistance and incentive offerings. Some states, like South Carolina, have tried to generate interest in UST sites by sending letters to county development offices, commercial realtors, and other potential partners.

What is currently being done to address the LUST issue?

NE-MW, along with its partners NALGEP and the National Association of Homebuilders, have made an effort to identify just what is being done to cope with the challenges of UST sites. These analyses have shown that states and communities have taken some limited, but important, initial steps to address concerns – and take advantage of opportunities – posed by UST sites. These initial actions could play an important role in a HUD-driven, homeowner focused effort to grapple with housing site contamination.

Activities to date have taken several forms, including operational, informational, and financial strategies. From an *operational* standpoint, some communities are starting to work to UST project approaches into various parts of their local government development process. Those that are trying to tie them to related economic development activities – like small-scale commercial development or infill housing – are seeing greater benefits from their UST reuse strategies. For example, in cities like Trenton, tank site projects are being considered in the same way that a traditional brownfield would be, which includes tapping into a variety of state resources aimed at general site cleanup. In other cities, like Oakland, project coordination among state and local agencies and community groups is proving to be an important approach when it comes to attracting private participation at UST sites.

Oregon is working to improve tank owners' access to broader brownfield incentives within the state, and the governor's regionally focused Community Solutions Teams are trying to promote this as well, especially in smaller jurisdictions. Utah's UST program routinely interacts with all players in the process to encourage coordination – as officials noted, with “the regulated public, other regulatory agencies, environmental consultants, real estate agents, developers, interested buyers,” and others. Utah extends this coordination to make sure that UST site responsibilities go to those entities with the greatest expertise; accordingly, the UST office leaves site marketing to local redevelopment agencies, because of their experience in this arena.

In terms of federal programs, cities in several states – notably New Jersey and California – have suggested that it will be important to bring a variety of federal program resources to bear on UST site projects. Programs offered by HUD, EDA, and other agencies – targeted to distressed areas or capital market imperfections – have the potential to play a key role in all types of UST site reuse. The bill under consideration by the Subcommittee could play a useful role in expanding federal awareness in this regard.

Clearly, it will be important for HUD and the states to enhance and encourage greater levels of all types of coordination and broader thinking about how UST sites are considered within a community's existing redevelopment framework and funding strategy.

A second key approach is *informational*; providing credible information on tank sites and tank issues can really facilitate the decision-making process and encourage owners to act. This role can be filled by various government agencies and levels of government or by quasi-public organizations, depending on local need and tradition. In Oregon, for example, officials have identified approximately 300 abandoned tank sites and are targeting those properties for an initial assessment to determine their exact level of contamination, on the premise that availability of that information will provide a development incentive. The state views this as an important informational role, to “get people past their hump of fear.”

But big gaps still exist. This means that a variety of educational and outreach approaches are critically needed to advance the UST reuse effort – for the private sector in particular. Private parties need to be enlightened on the proven ways to overcome liability and other barriers to successfully redevelop and reuse tank sites, about the economic benefits of cleaning and reusing these sites, and about the public incentives (such as VCP releases) and

private tools (such as environmental insurance) available that can help tie these projects together.

And many owners, cities, and community organizations need basic information on the costs and impacts of contamination on reuse to determine how best they can participate in UST reuse efforts, minimize stigma and enhance site value, and promote project viability.

And third – and often most critical, as the proposed bill suggests – *financial* support is a key activity that is just now starting to be considered. Federal and state agencies can provide important technical assistance and guidance to help launch these efforts, as well as resources aimed at cleanup and reuse. For example, in the NE-MW/NALGEP USTfield analysis, New Hampshire presciently suggested an USTfield connection to HUD similar to the one that now exists for brownfield efforts – defining and publicizing ways in which HUD could encourage cities to use their block grant program and other HUD resources to do things like finance tank site cleanup and redevelopment, or capitalize a local loan fund for site revitalization in distressed areas – activities that would fit within the basic mission of several of HUD’s programs.

A small but significant and growing number of states and communities have started to address the LUST issue and its impact on housing through initiatives of their own – efforts which could be enhanced by additional federal attention. In a survey of state brownfield efforts applicable to UST sites, NE-MW identified eight state initiatives that offered incentives available for housing development on contaminated sites. These include:

- **New Jersey** – \$10,000 matching grants are available to help cover the cost of remedial actions at sites where the intent is to clean them for unrestricted use, a natural fit with housing projects.
- **Michigan** – brownfield redevelopment grants and revitalization loans are available for a range of brownfield activities, including housing; state-authorized brownfield redevelopment authorities may do a variety of site preparation activities, including demolition, supported through tax increment financing mechanisms.
- **Illinois** – from the financial side, encourages links of low-interest loans and remediation tax credits to brownfield projects; and from the technical perspective, links to incentives such as NFR letters that can ease the fears of capital sources.
- **Oregon** – local housing authorities have targeted some of their state and federal financial assistance earmarked for construction of low income and senior housing units; some has been used in mixed-use developments.
- **Wisconsin** – several programs (brownfields grant program, tax increment finance, land recycling loan program for local governments, and the Brownfields Environmental Assessment Program, or BEAP) have been used at sites converted into housing.

NE-MW and NALGEP, in their analysis of reuse of abandoned gas stations, identified a number of community-based examples of sites where tanks were removed and properties cleaned for subsequent reuse as housing. They could prove to be useful examples in the context of the

proposed legislation.

- **Trenton**'s Canal Plaza project required removal of a leaking tank and 150 tons of contaminated soil; the site will be redeveloped by a faith-based developer with market rate housing – the first market rate housing constructed in Trenton in years.
- **Chicago** took title to an abandoned gas station site on Washington Street, to facilitate reuse in the city's distressed west side neighborhood, and removed eight USTs from the site. Together, the city and state developed and carried out a cleanup strategy for the property, and a local developer is working with the Chicago's Department of Housing to build affordable housing at the site.
- An abandoned gas station in **Oakland**'s Fruitvale district is the site of a Habitat for Humanity housing project, with four homes scheduled to begin construction this fall on the site.
- **Portland**, Oregon's REACH Community Development organization is building a three-story apartment building for 15 people with disabilities, on a former gas station site near the city's center and across from the county service facility for people with disabilities.
- Rochester worked with a private developer to convert a 2.2 acre former auto dealership and service garage and gas station into a mixed-use development featuring 77 new townhouses and apartments – the first new rental units in downtown Rochester in 20 years; the art deco former auto showroom has been converted into a coffee shop.

What would the proposed legislation do?

In establishing a HUD loan guarantee program for homeowners affected by LUST situations, the bill would set an important new public-private partnership in motion. The bill would establish a critical avenue for lenders to participate in a more coordinated and comfortable way with homeowners to finance LUST-related improvements. Overall, the bill would provide a way to preserve the health of residents endangered by petroleum contamination, while encouraging a mechanism for cleanup to be identified and put in place – it would allow an important environmental-community development connection to take place. This is an important step.

To enhance the impacts of the bill, I would suggest several modifications:

- include a finding that makes it clear that cleanup and reuse of housing abandoned because of LUST contamination is a clear goal of this bill, and should be an objective of HUD;
- allow public housing agencies to delegate their authorities in this bill to other capable local agencies or non-profit organizations that might have more knowledge of

contamination issues and thus be better suited to clean and manage housing properties acquired through this program;

- provide an additional incentive – perhaps a 100 percent guarantee – to lenders who agree to provide financing for cleanup of the original housing property as part of the financing package;
- allow the guarantee to be extended to mixed-use properties that include commercial uses as well as housing; and
- direct HUD to allow appropriate and protective institutional controls to be used in conjunction with all of its other housing programs – perhaps at sites that have been approved through a state voluntary cleanup program.

What else needs to be done to advance the worthwhile goal of the proposed legislation?

New federal legislation, involving HUD in a loan guarantee capacity, will prove helpful in advancing LUST site cleanup reuse and housing opportunities for families impacted by petroleum contamination. Other efforts, beyond the scope of HUD and the bill before this Subcommittee, can build on the new UST partnership it creates and help solidify a tank site reuse process, using appropriate tools.

- ***Technology and technical assistance***, where states can help disseminate reliable information – in particular, to HUD and to lenders – about what works, how it works, the cost savings that can be realized, the role institutional controls can play in a technology context, and the benefits all this can achieve.
- ***Incentives***, especially a new generation targeted and responsive to UST situations, such as subsidized insurance and financing intermediaries – these can meet more specialized local needs, and plug the holes that federal programs can not fill.

Every developer carries out some sort of analysis of **both risks and benefits** when thinking about taking on an USTfield site, **and the role that incentives might play in making the project more feasible. Again, the bottom line on contaminated properties is that these are real estate projects of one sort or another that happen to have an environmental problem — and they need to meet basic financing criteria.**

- ***New, innovative public-private partnerships*** can help homeowners and lenders, working with HUD, sort through UST issues and realize the value that cleaned up sites can have.

Private parties need to be enlightened on the proven ways to overcome liability and other barriers to successfully redevelop and market tank sites, about the economic benefits of cleaning and reusing these sites, and about the public incentives (such as voluntary cleanup program releases and related EPA “finality”) and private tools (such as environmental insurance) available

that can help tie these projects together.

- States could address a key barrier – ***certainty and finality*** – by integrating USTfield liability clarification tools with voluntary cleanup programs established to handle site cleanup and reuse.

Currently 48 states have programs in place to encourage site cleanups; **with their focus on process certainty and finality, they have the potential to be significant UST reuse tools. In fact, most state programs do allow sites with petroleum contamination to be addressed,** providing an opportunity for sites that do not easily fit LUST trust fund or other requirements to be addressed nevertheless.

- State governments should be encouraged to ***target their own economic and community development programs and broaden their eligibility criteria*** to leverage federal, local and private sector resources that could support USTfield projects.

More than half the states have developed funding programs that can address the unique financing challenges that contaminated sites face. Virtually all states offer a panoply of programs designed to foster economic and community development. Few of them carry restrictions that would limit their applicability to USTfield sites – as long as the UST-related project could meet the program's basic eligibility criteria.

To conclude – one theme frames all of these findings as they pertain to housing, and that is that LUST cleanup and site reuse will have the greatest local impacts when approached as a community development issue with an environmental twist, rather than only a pollution and public health problem. If contaminated tank sites are viewed only as pollution problems, disconnected from community revitalization goals and housing development strategies, then UST site reuse efforts will struggle. If, however, homeowners, localities, and their partners view tank site projects as real estate deals that further community development goals, then the environmental issues can be structured into an approach that creates value, attracts investment, and gathers support. This perspective on UST site redevelopment also reflects the emerging agenda of EPA, which will focus its waste cleanup efforts on a community revitalization and land use approach.

Overall, the success of efforts to clean and reuse housing sites and other properties contaminated by petroleum from LUSTs will be strengthened by the creation of strong redevelopment partnerships among localities, state agencies, and the private sector. The bill before the Subcommittee would foster an important collaboration between affected homeowners, HUD, and the lenders needed to make reuse happen.